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SUBJECT: DEMARCHE ON LIABILITY AND REDRESS UNDER THE
CARTAGENA PROTOCOL ON BIOSAFETY

REF: STATE 11910

¶1. On February 12, econoff delivered reftel demarche to two representatives of the Ministry of the Environment, Water, and Forests: Patrick Pedia, national point of contact for the Cartagena Protocol on Biosafety (CPB), and Augustin Kone, national point of contact for the Biosafety Clearing-House. They reported that although the Ivorian National Assembly has approved Cote d'Ivoire's accession to the CPB, the MFA has not yet deposited the instruments of accession. They do not expect Cote d'Ivoire to be a party to the CPB when the February 23-27 meeting on the Protocol takes place in Mexico.

Thus, Cote d'Ivoire will not send a representative to the meeting. Pedia and Kone fully expect Cote d'Ivoire to be a party to the CPB by the time the Fifth Meeting of the Parties of the CPB takes place in Nagoya, Japan, and they believe Cote d'Ivoire will send one or more representatives to that meeting.

¶2. Mr. Pedia was well versed in the issues to be debated at the Mexico meeting and said the issues had been widely discussed in Cote d'Ivoire for several years. He provided GOCI views on each of the five key issues addressed in reftel.

¶A. The GOCI believes the definition of "damage" should include damage to human health as well as damage to biodiversity. Pedia noted that socio-economic damage would be difficult to prove.

¶B. The GOCI holds that the definition of "operator" should be a function of the damage caused. For example, if a firm in an importing country violates norms and creates an inadvertent release of a living modified organism (LMO) into the environment, that firm should be deemed an "operator." However, if an LMO has not been tested adequately and causes damage to human health, the firm that engineered the LMO should be defined as the "operator."

¶C. The GOCI agrees with the USG that a "fault-based" standard of liability is more appropriate than "strict liability." Pedia noted that this position is closely related to the GOCI position on the definition of "operator."

¶D. The GOCI believes that insurance (or similar financial instruments) for shipments of LMOs should be mandatory. However, the GOCI believes only moderate levels of insurance coverage should be required.

¶E. The GOCI agrees with the USG that outcomes should be flexible enough so that governments may implement them within existing legal systems.

NESBITT